

Department of Veterans Affairs

§ 21.283

occupational objective that is confirmed in initial evaluation to be compatible with his or her disability, consistent with his or her abilities, interests, and aptitudes, and otherwise suitable for accomplishing vocational rehabilitation.

(Authority: 38 U.S.C. 5113)

(2) A veteran shall not be inducted into a vocational rehabilitation program retroactively if any of the following conditions exist even though all conditions of paragraph (b) of this section are met;

(i) Timely induction was prevented by the veteran's lack of cooperation in completing an initial evaluation;

(ii) The veteran has previously received benefits under another VA program of education or training for any period for which retroactive benefits are being requested under Chapter 31;

(iii) A period of extended evaluation is authorized to determine the reasonable feasibility of a vocational goal; or

(iv) The veteran's claim is not received within the time limits described in § 21.31.

(Authority: 38 U.S.C. 3101(9))

(c) *Effective date of retroactive induction.* The effective date of a veteran's retroactive induction into training shall be no earlier than one year prior to the date of application for Chapter 31 benefits but in no event may precede:

(1) The effective date of the establishment of the veteran's compensable service-connected disability; or

(2) The first date the veteran began training in the program leading to the occupational objective established in the veteran's plan.

(Authority: 38 U.S.C. 5113)

§ 21.283 Rehabilitated.

(a) *General.* For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101 (1), (2))

(b) *Definition.* The term "suitably employed" includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veterans's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veterans's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(d) *Rehabilitation to the point of employability has not been completed.* A veteran under a rehabilitation plan who

obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

- (1) The veteran obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation.
- (2) The employment obtained is consistent with the veterans's abilities, aptitudes and interests.
- (3) Maximum services feasible to assist the veteran to retain the employment obtained have been provided.
- (4) The veteran has maintained the employment for at least 60 continuous days.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(e) *Independent living.* A veteran who has pursued a program of independent living services will be considered rehabilitated when all goals of the program have been achieved, or if not achieved, when:

- (1) The veteran, nevertheless, has attained a substantial increase in the level of independence with the program assistance provided;
- (2) The veteran has maintained the increased level of independence for at least 60 days; and
- (3) Further assistance is unlikely to significantly increase the veteran's level of independence.

(Authority: 38 U.S.C. 3101 (1), (2) 3107)

[58 FR 68768, Dec. 29, 1993]

§ 21.284 Reentrance into a rehabilitation program.

(a) *Reentrance into rehabilitation to the point of employability following a determination of rehabilitation.* A veteran who has been found *rehabilitated* under provisions of § 21.283 may be provided an additional period of training or services only if the following conditions are met:

- (1) The veteran has a compensable service-connected disability and either;
- (2) Current facts, including any relevant medical findings, establish that the veteran's service-connected disability has worsened to the extent that

the effects of the service-connected disability considered in relation to other facts precludes him or her from performing the duties of the occupation for which the veteran previously was found rehabilitated; or

- (3) The occupation for which the veteran previously was found rehabilitated under Chapter 31 is found to be unsuitable on the basis of the veteran's specific employment handicap and capabilities.

(Authority: 38 U.S.C. 3101(a))

(b) *Reentrance into a program of independent living services following a determination of rehabilitation.* A finding of rehabilitation following a program of independent living services may only be set aside, and an additional period of independent living services provided, if the following conditions are met:

- (1) Either:
 - (i) The veteran's condition has worsened and as a result the veteran has sustained a substantial loss of independence; or
 - (ii) Other changes in the veteran's circumstances have caused a substantial loss of independence; and
- (2) The provisions of § 21.162 pertaining to participation in a program of independent living services are met.

(Authority: 38 U.S.C. 3109)

(c) *Reentrance into rehabilitation to the point of employability during a period of employment services.* A finding of rehabilitation to the point of employability by VA may be set aside during a period of employment services and an additional period of training and related services provided, if any of the following conditions are met:

- (1) The conditions for setting aside a finding of rehabilitation under paragraph (a) of this section are found;
- (2) The rehabilitation services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued rehabilitation;
- (3) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability